IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1971 OF 2005

Satish Champalal Katariya & anr.... Applicants

versus

State of Maharashtra ... Respondent

...

Mr.Sachin B. Thombre, for the Applicants.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

29th March 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The prosecution case is that the Applicant No. 1 started visiting the house of prosecutrix after institution of complaint against him by the sister of prosecutrix to impress upon the prosecutrix to dissuade her sister from proceeding with the said complaint. It is then alleged that the frequent visits made

by the Applicant transformed into frinedly relations between the Applicnt and the prosecutrix, which culminated with prosecutrix consenting to intercourse. It is further alleged that because of illicit relations, the prosecutrix was pregnant and she had to resort to abortion on two occasions. It is further alleged that Applicant No.2 committed forced intercourse on the prosecutrix while Applicant No. 1 was away to Rajasthan.

. The prosecution case as made out in the complaint is belied by the circumstance pointed out by the Applicants to the effect that the first abortion of the prosecutrix was resorted on 24th February 2004, whereas the complaint against the Applicant came to be filed on 19th March 2004. Even accepting the allegation in the complaint against the Applicant No.1, as it is, that he started visiting the prosecutrix after institution of complaint against him, no explanation is forthcoming as to how the prosecutrix conceived before March 2004 for which abortion was resorted to on 24th February 2004. There is substance in the argument canvassed on

behalf of the Applicants. There must be something more. The prosecution has not unravalled the true position.Moreover, the Applicant No.2 has been implicated on the allegation that he forcibly raped the prosecutrix while Applicant No.1 was away to Rajasthan. Applicant No.1 is the elder brother of Applicant No.2. Taking overall view of the matter, especially having regard to the fact that investigation is almost complete, as is accepted by the learned A.P.P. and the possibility of false implication of the Applicants in the case, in my opinion, the Applicants are entitled to be released on bail on the following conditions.

(A) The Applicants are directed to be released on bail in connection with CR.No.36/2005 registered with Wanawadi Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten thousand only) each with one or two local sureties in the like amount.

(B) The Applicants shall report to the investigating officer once a week on

Saturday between 10 a.m. to 2 p.m. till the filing of the chargesheet or as and when called upon by the investigating officer for the purpose of investigation of the present offence.

(C) The Applicants shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(D) The Applicants shall co-operate for the early disposal of the trial. If the trial Court is of the opinion that the Applicants are responsible for the delay in disposal of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)